IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

State of Raj. Vs. Saddam Khan
S.B.CR.LEAVE TO APPEAL NO.249/2006

Against judgment dated 29.04.2006 passed by learned Judicial Magistrate,First Class, Jaisalmer in Criminal Case No.250/03 (State Vs. Saddam Khan)

DATE OF ORDER : : 31st August, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. V.R. Mehta, Public Prosecutor.

BY THE COURT:

This criminal leave to appeal under Section 378(iii) & (i) Cr.P.C. has been filed by the State against judgment and order dated 29.04.2006 passed by learned Judicial Magistrate, First Class, Jaisalmer in Criminal Case No.250/03 (State Vs. Saddam Khan) whereby the accused respondent has been acquitted of the offence under Section 377 IPC.

Necessary facts for disposal of the criminal leave to appeal are that on 24.07.2002 complainant PW12 Lalaram submitted a written report Ex.P/9 in the Police Station Mohangarh with the averments that his cattle were used to be kept in the Murabba and on the day of incident when he went to his Murbba to take care of his cattle he found the accused sitting behind one calf and when he shouted, accused Saddam Khan ran away. It is stated that at that time one PW2 Achla Ram was also with him. On the above report, police registered case No.46/02 under Section 377 IPC.

On completion of investigation, charge-sheet was filed. After hearing both the sides, learned trial court framed charge against the accused respondent under Sections 377 IPC. The accused denied the charge and claimed trial. In support of its case, prosecution examined 12 witnesses and produced 10 documents in evidence. After close of the prosecution evidence, in the statement recorded under Section 313 Cr.P.C., the accused person denied the prosecution case and claimed to be innocent. In defence, no witness was examined. The learned trial court, after hearing learned counsel for the parties vide its judgment dated 29.04.2006 in Criminal

Case No.250/2003, acquitted accused-respondent of the charge framed against him under Section 377 IPC. Hence, the present criminal leave to appeal has been filed.

Heard learned Public Prosecutor and carefully gone through the material available on record.

It has been contended by learned Public Prosecutor that the learned trial court has not properly appreciated the evidence available on record. He further submits that from the perusal of statement of PW7 Dr. Chand Dev, it is apparent that a cow of three years was subjected to unnatural intercourse and in view of statement of PW7, it was proved that accused respondent committed offence under Section 377 IPC. It has also been submitted that prosecution story further finds corroboration from the statement of PW2 Achalaram, therefore, the judgment of acquittal passed by learned trial court deserves to be set aside and the accused is liable to be convicted and sentenced under Section 377 IPC.

I have carefully considered the submissions made before me and have gone through the impugned judgment of acquittal.

In the present case, learned trial court found that as far as FIR is concerned, there was no mention that some unnatural act was done by the accused respondent and further one witness namely Achalaram (PW2), who is said to be prime witness of the prosecution and who had gone to the police station along with complainant PW12 Lalaram, has stated that he saw the incident from a distance of one kilometer, which according to learned trial court was not a proper version of the witness and it was not possible for him to see the incident from such a long distance of one kilometer when the alleged act of intercourse was being committed by the accused-respondent. Thus, the learned trial court was of the opinion that in view of the FIR coupled with the statements of PW2 Achalaram and the complainant, the prosecution story was doubtful. The learned trial court further found that the evidence in the case is of shaky nature and as per the statement of the Dr. Chand Dev (PW7) the fact of alleged intercourse with the calf could not be proved for the reason that pubic hair and clothes of the accused sent for test in forensic laboratory gave negative report, therefore, the learned trial court found doubt in the prosecution case. Last

reason given by the learned trial court is that other evidence adduced in the present case was also not convincing and reliable and even some of the witnesses have turned hostile and there was also doubtful situation in relation to foot-prints and some of the witnesses stated that foot-prints were of shoes and some of the witnesses stated that foot prints were of their feet. Thus, learned trial court in view of above discussed position of the evidence, found that the prosecution has failed to prove its case, therefore, the accused-respondent was acquitted after giving him benefit of doubt. The above findings and the reasons appears to be reasonable and proper.

The position of law is also settled on the point that the Court while considering the matter where appeals are filed against the order of acquittal then, as a matter of routine interference is not required to be made unless it is found that findings are perverse or the trial Court has misread the evidence.

After carefully examining the matter, I do not find any illegality or infirmity in the impugned judgment and order of acquittal passed by the learned trial court which is with

reasons. I have also considered the entire evidence available on record but there appears no reason to interfere in the findings recorded by the trial court while acquitting the accused respondent in the absence of the reliable evidence. Hence, the leave to appeal is required to be rejected.

Accordingly, the leave to appeal is rejected.

(SATYA PRAKASH PATHAK), J.

vij